

BEFORE THE NORTH CAROLINA INDUSTRIAL COMMISSION

FILE NUMBER 17-003365

HAROLD SPENCER
(Hereinafter called "Employee")

FORSYTH COUNTY
(Hereinafter called "Employer")

PMA COMPANIES
(Hereinafter called "Servicing Agent").

AGREEMENT OF FINAL SETTLEMENT AND RELEASE

THIS AGREEMENT OF FINAL SETTLEMENT AND RELEASE, made and entered into this, the 19th day of December, 2017 by and between HAROLD SPENCER, hereinafter called the Employee, and FORSYTH COUNTY, hereinafter called the Employer, and by and through PMA Companies, hereinafter called the Servicing Agent,

WITNESSETH:

WHEREAS, the parties are subject to and bound by the provisions of the North Carolina Workers' Compensation Act and, on the 23rd day of January, 2017 the relationship of Employer-Employee having existed; and

WHEREAS, the Employee suffered a compensable injury by accident arising out of and in the course and scope of his employment while working as a Detention Officer when on January 23, 2017, was running wind sprints indoors and tore his hamstring in his left leg; and

WHEREAS, the Employer and Servicing Agent accepted the Employee's claim of left hamstring strain as a medical only claim under a Form 63. At the time of the accident,

the Employee had an average weekly wage of \$752.00, yielding a compensation rate of \$501.36 per week. The Employer and Servicing Agent paid \$7,422.14 in medical expenses and no indemnity benefits; and

WHEREAS, the Employee is represented by the Oxner + Pernar, Greensboro, North Carolina, Joel Davis appearing, and the Employer and Servicing Agent are represented by the Kestenbaum Law Firm, Durham, North Carolina, Jane Kestenbaum appearing; and

WHEREAS, the Employee, Employer, and Servicing Agent feel that it is in the best interests of the parties to have finality of litigation in these matters, and to that end desire to compromise and settle all matters in controversy among themselves, without the necessity of any hearing before the North Carolina Industrial Commission, subject to the approval of said Commission, as by law provided.

NOW, THEREFORE, notwithstanding the controversy between the Employee and the Defendants, and in specific recognition of the need for finality in the litigation; and in consideration of the things hereinabove received as having been done and the things hereinafter agreed to be done and the mutual agreements on the part of each of the parties, it is agreed as follows:

1. The Employer and Servicing Agent agree to pay or cause to be paid to the Employee and without commutation, the lump sum of SIXTEEN THOUSAND AND TWO

HUNDRED FIFTY DOLLARS AND NO CENTS (\$16,250.00) in full and final settlement of all compensation due or to become due under and by virtue of the North Carolina Workers' Compensation Act for the claim that is subject to this agreement.

2. Anticipating an attorney's fee, the balance of TWELVE THOUSAND SEVEN HUNDRED AND FIFTY DOLLARS (\$12,750.00) as the balance of future compensation in payments pro-rated over Employee-Plaintiff's life expectancy of 25.1 years, based on Employee-Plaintiff's date of birth of _____, according to the Mortality Tables Codified in N.C. Gen. Stat. §8-46. Employee-Plaintiff's life expectancy of 25.1 years equals 1305.2 weeks and yields payments of \$9.77 per week.

3. The Employer and Servicing Agent will pay, or cause to be paid, any medical bills incurred as the result of the Employee's accepted, compensable injuries on January 23, 2017 up to the date of this agreement and no further. However, the parties agree that all such medical bills are paid in full and there are no outstanding medical bills related to this accepted claim. It is further agreed by the parties that the positions of the respective parties to the Agreement are reasonable as to the payment of medical expenses. The parties hereby acknowledge that the issue of the payment of medical expenses is a material element to the Employer and Servicing Agent entering into this agreement.

4. Whereas It is not the intention of the parties to this Settlement Agreement to shift responsibility for future medical treatment that the Employee may need to Medicare at some future time. In considering these issues, the parties specifically considered the fact that the Employee has not applied for Social Security Disability

Benefits as a result of his accidental injuries of January 23, 2017 and the Employee is currently not Medicare eligible and has no reasonable expectation of becoming Medicare eligible related to the accidental injuries that are the subject of this claim. In that regard, the parties have reasonably considered the interest of Medicare in reviewing all medical records related to this matter and have in good faith determined that no allocation is needed. Therefore, no Medicare Set Aside has been established.

5. The Employer and Servicing Agent agree to pay or cause to be paid the costs of this proceeding before the North Carolina Industrial Commission, and waive reimbursement from Plaintiff.

6. It is understood and agreed by the Employee that in making this Agreement, he was not influenced by any representations or statements regarding his condition, the nature of his injuries, or any other matters concerning his claim before the North Carolina Industrial Commission, made by any person, firm, corporation, physician, or surgeon acting for or on behalf of the Employer or Servicing Agent; that the facts in connection with his employment and with his accidental injury and impaired physical condition, if any, are fully known, understood and comprehended by the Employee, and that his rights under the Workers' Compensation Act are thoroughly and completely understood by him. In making this Agreement the parties hereto understand that the Employee's condition as a result of his injuries may be permanent, recurrent and progressive, and in making this Agreement it is understood that the sum of money herein paid and other agreements recited above are in full and final settlement of all claims of the Employee against the Employer and Servicing Agent as to claims under the North Carolina Workers'

Compensation Act, including future medical expenses, change of condition and/or death benefits as it relates to the January 23, 2017 injury. The parties expressly waive the right, if any, to set aside this Settlement Agreement should the medical opinions made orally to the Employee by his health care providers, expressed in this Agreement, and/or in the medical records prove to be in error. Further the parties agree that this Agreement may not be set aside on the grounds that further or additional medical information or records exist or could be acquired. The parties affirmatively represent to the Industrial Commission that they have each had the opportunity and ability to obtain the medical and other records necessary to appropriately evaluate this claim and to enter into this Settlement Agreement.

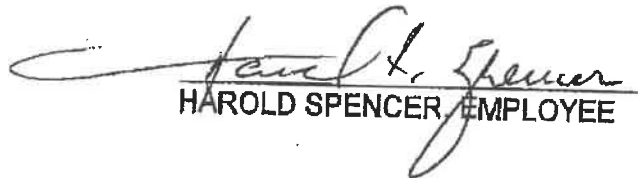
7. The Employee agrees to accept the sums herein agreed to be paid to him or on his behalf, in full, final and complete settlement and satisfaction of any past, present and future claims, demands, suits, actions or rights of action of whatsoever nature and kind, which the said Employee now has or may hereinafter have or claim to have on account of the alleged injury of January 23, 2017. It is the sense of this agreement that the said sums so agreed to be paid shall be accepted in full settlement and satisfaction of all claims arising out of alleged injury of January 23, 2017, whether presently existing, or presently known, or whether hereinafter existing, appearing or otherwise, and whether by virtue of things now existing or by change of conditions hereinafter. However, it is further agreed that no rights other than those arising under the provisions of the Workers' Compensation Act are compromised or released. The Employee knowingly and intentionally waives any right he may hereafter have to claim any medical expenses or

indemnity compensation for the injuries which are the subject of this agreement.

8. The parties to this agreement hereby waive any hearing before the North Carolina Industrial Commission, and in presenting this agreement for approval, they represent that they have made available to the Commission with said agreement all medical information presently in their possession concerning the Employee's physical condition.

9. This agreement is made expressly subject to the approval of the North Carolina Industrial Commission and to the provisions of the North Carolina Workers' Compensation Act, and the same shall be binding upon the parties to this agreement only if and when the same shall have been submitted to and approved by said Commission either by the endorsement of its approval hereon or by the issuance of its award approving the same.

IN WITNESS WHEREOF, the parties hereto have set their hands and Employee has adopted as his seal the "Seal" appearing beside his signature, all as of the day and year first above written.

 (Seal)
HAROLD SPENCER, EMPLOYEE

STATE OF NORTH CAROLINA

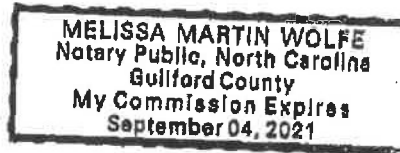
COUNTY OF GUILFORD

I, MELISSA MARTIN WOLFE, a Notary Public in and for said County and State, do hereby certify that HAROLD SPENCER personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal, this, the 4th day of JANUARY, 2017. 8

Melissa Martin Wolfe
Notary Public

My Commission Expires:



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FORSYTH COUNTY,
Employer

By: 
Attorney

PMA COMPANIES,
Servicing Agent

By: 
Attorney

By: 

Jane Kestenbaum
NC State Bar No. 16459
Attorney for Employer
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(919) 459-2361

Consented to by:
Oxner + Permar 

By: 

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